

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #3	CCRB Case #: 201405312	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/02/2014 3:50 AM	Location of Incident: East Burnside Avenue and Creston Avenue	Precinct: 46	18 Mo. SOL 12/2/2015	EO SOL 12/2/2015	
Date/Time CV Reported Mon, 06/02/2014 5:02 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 06/02/2014 5:02 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Nadine Nazario	16704	955252	PBBX
2. POM Derrick Kreckmann	26021	954032	PSA 8
3. POM Diego Marin	03763	954097	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POF Nadine Nazario	Abuse: PO Nadine Nazario stopped § 87(2)(b)	
B.POM Diego Marin	Abuse: PO Diego Marin stopped § 87(2)(b) § 87(2)(b)	
C.POM Derrick Kreckmann	Abuse: PO Derrick Kreckmann stopped § 87(2)(b) § 87(2)(b)	
D.POF Nadine Nazario	Abuse: PO Nadine Nazario searched § 87(2)(b)	
E.POM Derrick Kreckmann	Abuse: PO Derrick Kreckmann frisked § 87(2)(b) § 87(2)(b)	
F.POM Derrick Kreckmann	Abuse: PO Derrick Kreckmann searched § 87(2)(b) § 87(2)(b)	
G.POM Derrick Kreckmann	Abuse: PO Derrick Kreckmann frisked § 87(2)(b)	
H.POM Derrick Kreckmann	Abuse: PO Derrick Kreckmann searched § 87(2)(b)	
I.POM Derrick Kreckmann	Discourtesy: PO Derrick Kreckmann spoke rudely to § 87(2)(b) § 87(2)(b)	

### Case Summary

On June 2, 2014 at approximately 3:50 a.m., § 87(2)(b) stated that, on her way home, she passed a bodega at the corner of East Burnside Avenue and Creston Avenue, in the Bronx, when she saw two individuals whom she did not want to identify. The investigation identified these individuals as § 87(2)(b) and § 87(2)(b) stopped and greeted one of the two individuals and spoke with him for approximately three minutes. During this time, PO Derrick Kreckman, PO Nadine Nazario and PO Diego Marin, of Patrol Borough Bronx, were observing the three from across the street.

§ 87(2)(b) and § 87(2)(b) then began to cross the street when PO Nazario, PO Kreckman and PO Marin stopped all three individuals for allegedly crossing against a steady Do Not Walk sign (**Allegations A-C**). Subsequent to these stops, PO Nazario allegedly searched § 87(2)(b) pockets (**Allegation D**). Additionally, PO Kreckman allegedly frisked and searched § 87(2)(b) and then allegedly frisked § 87(2)(b) removed § 87(2)(b)'s hat and allegedly shouted "fuck your hat" while tossing it to the ground behind him (**Allegations E-I**).

§ 87(2)(b) and § 87(2)(b) were each released with a summons for allegedly violating New York City Traffic Rule §4-03(c)(3), crossing against a steady Don't Walk signal.

### Mediation, Civil, and Criminal Histories

- During her in-person statement at the CCRB, § 87(2)(b) rejected mediation.
- Without a NYSID number, a search of § 87(2)(b) criminal history could not be conducted via the Office of Court Administration database.
- A notice of claim inquiry was sent to the New York City Comptroller's office on March 23, 2015, a response to this inquiry will be included in the case file upon its receipt.

### Civilian and Officer CCRB Histories

- § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)
- PO Derrick Kreckman has been a member of service for two years and there are no substantiated CCRB allegations against him. PO Kreckman had eight CCRB complaints filed against him in the year 2014. Two complaints are currently under investigation, the other five were closed as complainant uncooperative, mediation attempted and unsubstantiated. Three of the cases contained abuse of authority allegations, and two contained a discourtesy allegation (encl. 3A-B).
- PO Nadine Nazario has been a member of the service for one year and there are no substantiated CCRB allegations against her (encl. 3C).
- PO Diego Marin has been a member of the service for two years and has one substantiated CCRB allegation against him. In CCRB case #201400753 the CCRB substantiated a stop allegation against him and recommended Command Discipline B, the NYPD discipline and penalty are not currently available via the CCRB's Complaint Tracking System (encl. 3D).

### Potential Issues

§ 87(2)(b) refused to provide the names or contact information for § 87(2)(b) and § 87(2)(b) throughout the investigation. The names of these individuals were discovered through the summonses issued by PO Marin at the time and location of this incident. Letters were sent to addresses of both § 87(2)(b) and § 87(2)(b) on September 4, 2014, as it was listed on their respective summonses. Both letters were returned by the USPS with the note, "Return to Sender- not known." A New York City Department of Correction inmate lookup was conducted on September 28, 2014, indicating that neither § 87(2)(b) nor § 87(2)(b) were incarcerated during these contact attempts. Lexis Nexis searches were conducted for both § 87(2)(b) and § 87(2)(b) with negative results.

## **Civilian Statements**

§ 87(2)(b) (encl. 5A-H)

- § 87(2)(b) was § 87(2)(b) old at the time of this incident. She is a 5'6" tall, 170-lb black woman with black hair and brown eyes.

§ 87(2)(b) appeared at the CCRB on June 19, 2014 and provided the following statement.

- § 87(2)(b) refused to identify the individuals later determined to be § 87(2)(b) and § 87(2)(b) § 87(2)(b)
- She stood outside of the bodega for approximately three minutes, interacting with § 87(2)(b) she was unaware if either § 87(2)(b) or § 87(2)(b) were involved with any criminal activity prior to her arriving at the location.
- § 87(2)(b) noticed officers determined to be PO Nazario, PO Kreckmann, and PO Marin observing her from across the street while in front of the bodega.
- § 87(2)(b) and § 87(2)(b) crossed East Burnside Avenue, within the lines of the crosswalk and with the "Walk" signal.
- § 87(2)(b) was stopped by PO Nazario, when asked why she was being stopped, PO Nazario replied that she was jaywalking.
- PO Nazario directed § 87(2)(b) to stand against the wall, then entered her pockets and pulled out a can of pepper spray to which PO Nazario stated, "Is this mace?"
- During this time PO Kreckmann frisked § 87(2)(b) entered his pockets pulling out money and saying, "That's a lot of money," to which § 87(2)(b) responded "How the fuck is \$80 a lot of money?"
- § 87(2)(b) believed that PO Kreckmann then frisked § 87(2)(b) but did not actually observe him doing so, since § 87(2)(b) was interacting with § 87(2)(b) on the other side of the building.
- § 87(2)(b) heard § 87(2)(b) say something about his hat and PO Kreckmann yell, "Fuck your hat," and then saw the hat being thrown backwards.
- After the frisks, a supervisor responded to the scene and ran the three civilians' names for open warrants.
- The three were eventually released with summonses for crossing the street against a steady "Do Not Walk" signal.

## **NYPD Statements:**

**Subject Officer: PO NADINE NAZARIO (encl. 6A-I)**

- PO Nazario, PO Kreckmann and PO Marin observed § 87(2)(b) and § 87(2)(b) for two to three minutes before they crossed the street.
- PO Nazario did not recognize any of the three individuals, and stated that she could not identify anything that they were doing as suspicious, though they were loud and "brought attention to themselves."
- All three civilians crossed together against a steady Do Not Walk sign, resulting in simultaneous stops by the three officers.
- § 87(2)(b) appeared agitated and confrontational, stating that her aunt was a lieutenant, and that she would call IAB. § 87(2)(b) did not make any physical threats.

- PO Nazario frisked § 87(2)(b) because her hands were moving around in her pockets and her agitated and confrontational demeanor. PO Nazario did not mention whether she asked § 87(2)(b) to remove her hands from her pockets. PO Nazario did not remember what § 87(2)(b) was wearing, and did not recall seeing any shapes or bulges in her pockets.
- PO Nazario did not feel anything during the frisk, and stated that she did not search § 87(2)(b). PO Nazario did not recall discovering pepper spray from § 87(2)(b) person, and did not recall pepper spray being found on any individual during this incident.
- § 87(2)(b) did not have an ID on her. However, PO Nazario decided that she would ask § 87(2)(b) for her identifying information verbally to check for open warrants and issue the summons. PO Nazario confirmed that she never intended to arrest § 87(2)(b) to verify her identity, though this was a discretionary decision.
- PO Nazario believed that § 87(2)(b) and § 87(2)(b) were also frisked for not removing their hands from their pockets and they were being verbally aggressive.
- All three civilians had their hands in their pockets while speaking to officers.
- PO Nazario denied hearing any officer say “Fuck your hat,” or seeing any hat being tossed into the street.

**Subject Officer: PO DERRICK KRECKMANN (encl. 8A-G)**

- PO Kreckmann, PO Marin, and PO Nazario observed § 87(2)(b) and § 87(2)(b) congregating in front of a bodega.
- PO Kreckman stated that the bodega they were standing in front of was a known drug dealing location and the two men, § 87(2)(b) and § 87(2)(b) are known drug dealers to the precinct.
- PO Kreckman stated that one of the individuals has been arrested over seventy times. PO Kreckman stated that both individuals’ pictures are located in the arrest processing room, and they were made aware of these individuals and the location through roll call. PO Kreckman also stated that his XO has stated directly to officers to pay special attention to the bodega in front of which these three individuals were standing.
- The three officers observed these individuals congregating for approximately five minutes, PO Kreckman stated that they see § 87(2)(b) and § 87(2)(b) at that location often. The three individuals entered and exited the bodega approximately three or four times altogether, sometimes alone, and sometimes two at a time, but never all at once.
- PO Kreckman stated that the officers’ goal was to observe the individuals in attempts to catch any of them dealing drugs.
- All three individuals jaywalked across Burnside Avenue, by walking against a steady Do not walk sign. PO Kreckman stated that due to the Mayor’s Vision Zero plan the officers were directed to issue summonses to individuals jay walking as a way to curtail pedestrian fatalities.
- All three officers collectively asked the three individuals to stop and provide identification.
- This request for their identification resulted in the three becoming visibly distraught. The officers dealt with the three individuals along the corner of a building wall.
- PO Kreckman and PO Marin were not in a position to fully see PO Nazario and § 87(2)(b) however, he stated that he believed that PO Nazario frisked § 87(2)(b).
- § 87(2)(b) had two large bulges in his front two pants pockets.
- PO Kreckman frisked § 87(2)(b) for weapons. PO Kreckman stated that he conducted a full body frisk for weapons, starting at the individuals’ chest, arms, waistband, legs, and pockets.
- Inside § 87(2)(b)’s pocket was a hard object, which turned out to be a large “wad” of cash, approximating a couple thousand dollars in twenties, a plastic or glass pipe, a phone, a lighter.

As PO Kreckman was removing these items, he placed them on the ground. There were no weapons.

- PO Marin appeared to be having a difficult time conducting a frisk of § 87(2)(b) due to the individual's resistance, so PO Kreckman conducted the frisk for PO Marin.
- § 87(2)(b) had a hat on his head that § 87(2)(b) did not want to remove, after being asked to remove it, so PO Kreckman grabbed the hat and tossed it behind him to the ground. PO Kreckman explained that it is common practice for an individual's hat to be removed when an officer is conducting a frisk of that person.
- PO Kreckman stated that he did not "search" the individual whose hat was removed.
- PO Kreckman denied saying "Fuck your hat" when removing the hat, and denied hearing any officer make that statement.

**Subject Officer: PO DIEGO MARIN (encl. 7A-G)**

- At the time and place of occurrence, PO Marin observed two males and one female jay walking against a steady don't walk sign from the southwest corner of Burnside and Creston to the north side. The officers observed them for approximately a minute, before they crossed the street. PO Marin's attention was drawn to them as they were crossing. He did not recall seeing anything suspicious before they crossed the street.
- The officers approached them and said, "Sir and ma'am, can we talk you for a minute?" causing the three individuals to stop.
- The officers then explained why they were stopped and asked for their IDs. § 87(2)(b) did not have an ID so he gave his information verbally.
- The civilians were confrontational, asked why they were being stopped for jaywalking, one argued that he had crossed right in the middle of the crosswalk.
- § 87(2)(b) said he was going to call his lawyer. PO Marin could not describe any other ways in which they were confrontational.
- The civilians did not comply with direct orders. PO Marin told the men, "Don't move," and, "Take your hands out of your pockets," but they were moving back and forth and refused to comply with orders to remove handcuffs from pocket. PO Marin did not recall how many times he ordered the men to remove their hands from their pockets, but they eventually complied.
- PO Marin noted that at one point, one of them was smoking a cigarette.
- Both men were frisked. In the CCRB interview, when PO Marin was asked if either of them removed their hands from their pockets before being frisked, he said, "I believe so, yes." When asked if both men removed their hands from their pockets before being frisked, PO Marin said he did not recall.
- PO Marin then explained that he took the position of guarding the men while PO Kreckmann actually interacted with them and performed the frisks.
- He said PO Kreckmann frisked the men for the officers' safety and the safety of the men as well. PO Marin suspected the men had a weapon based on the men's movements (they were moving back and forth and PO Marin had to tell them to stay against the wall or a fence), the fact that their hands were in their pockets, the fact that they initially refused to remove their hands as requested, and the fact of their verbally confrontational demeanor.
- PO Kreckmann frisked both men and PO Marin did not frisk them. He also stated that it was PO Kreckmann's decision to perform the frisks and they didn't discuss before PO Kreckmann initiated the frisks.
- PO Marin did not recall seeing PO Kreckmann enter any of their pockets.
- They wore baggy clothes, but PO Marin did not recall seeing any bulges.

- PO Marin recalled that one of them wore a hat, but he did not recall anyone's hat being removed. He did not recall seeing the hat on the street. He did not recall any officer saying, "Fuck your hat."
- PO Marin recalled that § 87(2)(b) was frisked but not searched by PO Nazario.
- PO Marin did not hear PO Nazario and § 87(2)(b) interaction as he focused on the hands and movements of the two men he was watching. PO Marin did not recall the recovery of pepper spray or mace from any of the civilians. He denied hearing any officers making any statements about any civilian's money
- A sector car with uniformed officers and a sergeant he could not recall pulled up and the officers used their computer to check the names of the men. He did not recall at what point the sergeant arrived, or if the sergeant was present for the frisks.
- Neither civilian was placed in handcuffs or ever under arrest. They were issued summonses on the scene. PO Marin did not intend to arrest the man without ID, and after checking his name on the computer, his picture came up and the officers confirmed that he was not lying about his identity.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

PO Nazario, PO Marin, and PO Kreckman all stated that they observed § 87(2)(b) and § 87(2)(b) commit the violation that led to their stops, and the officers all stated that they collectively decided to stop the individuals. § 87(2)(b) stated that she was stopped by PO Nazario, the only female officer on scene. PO Kreckman stated that he originally dealt with, frisked, and searched § 87(2)(b) and PO Marin stated that he originally dealt with § 87(2)(b). Therefore allegations A, and D are pleaded against PO Nazario, Allegation B is pleaded against PO Marin, and Allegations C, E, and F are pleaded against PO Kreckman. PO Kreckman also admitted to frisking and removing the hat off of § 87(2)(b)'s head, and tossing it on the ground. § 87(2)(b) alleged that an officer stated "Fuck your hat," before seeing it being tossed to the ground. Therefore allegations G, H, I, and J are pleaded against PO Kreckman.

#### **Allegation A- Abuse of Authority- PO Nadine Nazario stopped § 87(2)(b)**

#### **Allegation B- Abuse of Authority- PO Diego Marin stopped § 87(2)(b)**

#### **Allegation C- Abuse of Authority- PO Derrick Kreckman stopped § 87(2)(b)**

It is undisputed that PO Nazario stopped § 87(2)(b) PO Marin stopped § 87(2)(b) and PO Kreckman stopped § 87(2)(b). It is also undisputed that all three civilians were each released with a summons for allegedly crossing East Burnside Avenue against a steady Don't Walk sign, though the actual commission of this violation is disputed. All officers were consistent that the three individuals crossed against the Don't Walk signal, while § 87(2)(b) stated that she, § 87(2)(b) and § 87(2)(b) crossed the street legally.

PO Nazario and PO Kreckman also stated that they observed § 87(2)(b) and § 87(2)(b) outside of a bodega from two to five minutes. PO Kreckman also stated that the bodega that they were standing in front of was a known drug dealing location, and § 87(2)(b) and § 87(2)(b) were known to the officers as drug dealers. § 87(2)(b), § 87(2)(g)

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§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation D- Abuse of Authority- PO Nadine Nazario searched § 87(2)(b)**

**Allegation E- Abuse of Authority- PO Derrick Kreckman frisked § 87(2)(b)**

**Allegation F- Abuse of Authority- PO Derrick Kreckman searched § 87(2)(b)**

**Allegation G- Abuse of Authority- PO Derrick Kreckman frisked § 87(2)(b)**

**Allegation H- Abuse of Authority- PO Derrick Kreckman searched § 87(2)(b)**

According to § 87(2)(b) after being stopped, PO Nazario immediately entered § 87(2)(b) pockets, and pulled out a small can of pepper spray from § 87(2)(b) pocket. PO Nazario denied searching § 87(2)(b) however she did state that she frisked § 87(2)(b). All officers denied that a can of pepper spray was discovered by any officer on scene.

It is undisputed that PO Nazario interacted with § 87(2)(b) against a building at the corner of East Burnside Road and Creston Avenue while PO Kreckman and PO Marin interacted with § 87(2)(b) and § 87(2)(b) at the other side of the same corner. § 87(2)(b), § 87(2)(g)

PO Nazario stated that the reason she frisked § 87(2)(b) was because § 87(2)(b) was moving her hands whilst inside her pockets and was agitated and confrontational. When asked how § 87(2)(b) was confrontational, PO Nazario stated that § 87(2)(b) threatened to call IAB on the officers, and stated that her aunt was a lieutenant. PO Nazario denied seeing any bulges in § 87(2)(b) pockets.

PO Kreckman stated that after the three civilians were stopped, he first began speaking with § 87(2)(b) who appeared to have two large bulges in each of his front two pockets. PO Kreckman stated that other than the bulges being relatively large, they weren't a specific shape, and he stated that he wasn't sure what either of them were. He also stated that both § 87(2)(b) and § 87(2)(b) initially did not refused orders to remove their hands from their pockets, but then eventually complied.

He stated that he then proceeded to conduct a full-body frisk of § 87(2)(b) starting at his arms, shoulders, chest, then moving down to his torso and legs, and finally § 87(2)(b)'s pockets. PO Kreckman stated that when he ran his hands over the bulges, they were hard, though again, did not have a specific shape to them and again he stated that he did not know what the bulges were. He then entered the pockets revealing a "couple thousand" dollars in cash, and a small tobacco pipe

PO Kreckman did not present any justification to frisking § 87(2)(b) and stated that PO Marin was attempting to conduct the frisk when he decided to step in and conduct the frisk for PO Marin. PO Kreckman explained that § 87(2)(b) was not complying with PO Marin's orders and PO Marin appeared to be having difficulty in conducting the frisk. PO Marin denied ever frisking or attempting to frisk § 87(2)(b) and stated that PO Kreckman conducted the frisks of both § 87(2)(b) and § 87(2)(b) alone. PO Kreckman also admitted that he removed § 87(2)(b)'s hat during his frisk of § 87(2)(b) stating that it was common procedure to do so during frisks when the subject has a hat on, since some individuals carry razor blades or other small weapons within the brims of their hats. PO Kreckman stated that there was nothing specifically suspicious about § 87(2)(b)'s hat.

PO Kreckman testified that prior to the stop, he suspected drug related criminal activity regarding the three individuals, since § 87(2)(b) and § 87(2)(b) were known drug dealers within the precinct, and the bodega they were standing in front of was a known drug location that they were told by supervisors and through roll call to pay special attention to. Neither PO Nazario, nor PO Marin mentioned these factors in their respective CCRB interviews. However, PO Kreckman stated that the three officers observed § 87(2)(b) and § 87(2)(b) with the goal of catching them dealing drugs.

§ 87(2)(b), § 87(2)(g)

An officer's direction for an individual to halt and take his hands out of his pockets requires a founded suspicion that criminality is afoot. A huddle of individuals in front of a known drug location does not support that founded suspicion. People v. Wilson, 201 A.D.2d 399 (1994). (encl. 1AF) In order to justify a frisk of an individual, an officer must harbor a reasonable suspicion that the person subjected to the frisk is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009) (encl. 1A-H). The purpose of a frisk is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence and must be strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. If the frisk goes beyond what is necessary to determine if the suspect is armed, it is no longer valid. Minnesota v. Dickerson, 508 U.S. 366 (1993)(encl. 1I-T).

An individual's hands in their pocket, absent any indication of a weapon, such as the visible outline of a gun, does not create reasonable suspicion that a person had committed or was about to commit a crime. People v. Fernandez, 87 A.D.3d 474 (1<sup>st</sup> Dept. 2011)(encl. 1U-V).

An amorphous bulge does not provide reasonable suspicion that a person is armed and dangerous. People v. Marine, 142 A.D.2d 368 (1<sup>st</sup> Dept. 1989)(encl. 1W-Y). Where a visual observation or a limited protective frisk of a subject reveals a bulge, that bulge must look like or feel like a weapon in order to justify a more intrusive search. People v. Clark 213 A.D.2d 946 (3<sup>rd</sup> Dept. 1995)(encl. 1AA-AC)

NYPD Patrol Guide 212-11 defines a frisk as a running of the hands over the clothing, feeling for a weapon. The definition of a search is to place hands inside pocket or other interior parts of clothing to determine if object felt is a weapon (encl. 1AD-AG).

§ 87(2)(b), § 87(2)(g)

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**Allegation I- Discourtesy- PO Derrick Kreckman spoke rudely to § 87(2)(b)**  
PO Kreckman admitted to removing § 87(2)(b)'s hat and tossing it to the ground. PO Kreckman however denied saying, "Fuck your hat" while doing so. § 87(2)(b) and § 87(2)(b) were unable to be contacted for a statement, and therefore § 87(2)(b) allegation was uncorroborated. Both PO Nazario and PO Marin denied hearing any officer say "fuck your hat," or use any profanity throughout the encounter.

§ 87(2)(b), § 87(2)(g)  
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Pod: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
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